IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

United States of America	§	
	§	
v.	§	**Cr. Case No. 18-39 WES**
	§	
Billie-Russell: Schofield	§	
	§	

PROVISIONAL OBJECTION TO MOTION TO WITHDRAW & MOTION TO NOTICE,

With DECLARATION, EVIDENCE and Exhibits in Support

To this date, Mr. George West has refused my repeated requests to explain why the defense I have proposed, based on irrefutable evidence provided by the Government, is supposedly not dispositive and fully justifying a motion to withdraw the plea dated April 22, 2019. Since the Court has paid for Mr. West's time to conscientiously study and vigorously defend my case, he owes both the Court and me a detailed explanation why he is refusing to use that defense, which is simple: I owe the Government nothing, absent falsified IRS digital and paper records. That is, after my plea agreement, I discovered the IRS sequentially falsified its underlying digital records to initiate this case, in a particular manner the Service always uses to justify launching court attacks on nontaxpayers.[1] Accordingly, my proposed defense rests on THREE ELEMENTS:

1. Multiple top-ranking leaders of IRS have stated the income tax is 'voluntary';[2]

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[1] IRS knows "the revenue laws are a code or system in regulation of tax assessment and collection, which relate to taxpayers and not to nontaxpayers," and that "the latter are without their scope" per *Bartell v. Riddell*, 202 F. Supp. 70 - Dist. Court, SD California 1962. That's why they use computer fraud: to bring nontaxpayers within the IRS taxpayer enforcement scheme.

[2] For two examples:
-- "We don't want to lose voluntary compliance... We don't want to lose this gem of voluntary compliance." Fred Goldberg, IRS Commissioner, *Money* magazine, April, 1990. By so stating, Goldberg confirmed the

2. IRS has repeatedly conceded that 26 U.S.C. §6020(b) does not apply to income tax;[3] so
3. to circumvent the lack of authority to enforce the income exaction, IRS made a certain simultaneous two-part computer entry on August 25, 2011 causing the all-controlling Individual Master File (IMF) record concerning me and 2009[4] to falsely reflect that
   a. IRS supposedly received a 1040A FROM ME on the "RET RCVD DT", (Return Received Date) of "08252011", when no such thing exists and no such thing occurred, that
   b. That IRS supposedly "referred" the phantom 'return' to the IRS' Examinations Division on "09012011" for examination, which never occurred; and that
   c. IRS supposedly prepared a "substitute income tax return" concerning me and 2009 on "09122011", (variously "09-12-2011"), when no such thing occurred and no such "return" exists.

I move the Court to judicially notice the attached *Respectful Demand to Court Appointed Counsel*, with accompanying Exhibits A-F, which I presented to Mr. West on September 8, 2020. I request the Court notice that *Respectful Demand* and Exhibits ONLY to verify that I presented to Mr. West extremely detailed facts and evidence to support my proposed defense. [The *Respectful Demand*... and Exhibits are incorporated herein fully by reference.]

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sworn 1953 testimony of Dwight E. Avis, head of the Alcohol and Tobacco Tax Division of the Bureau of the Internal Revenue before the House Ways and Means Committee of the Eighty-Third Congress: "Let me point this out now: Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day."

[3] The authority to perform substitutes for return are discussed in the Internal Revenue Manual §5.1.11.6.7 and elsewhere, which authority is strictly limited to matters involving "**employment, excise and partnership taxes**". [Link here: http://www.irs.gov/irm/part5/irm_05-001-011r-cont01.html, scroll down to 5.1.11.6.7 "IRC 6020(b) Authority".] The Privacy Impact Assessment IRS issues concerning 6020(b) precisely confirms that limitation. [Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf] In the Revenue Officer's Training Manual, (Unit 1, Page 23-2) IRS also concedes: "The IRM restricts the broad delegation shown in figure 23-2… to employment, excise and partnership tax returns because of constitutional issues".

[4] I am only being charged with a willful failure to file for 2009. IRS records prove I have no such duty.

Inference Derived from Evidence presented.

My proposed defense can be restated succinctly:

IRS unlawfully falsifies its controlling standard of truth software, (IMF), using one of two ancillary databases, to bring nontaxpayers within the assessment and collection power of the Service. Specifically, IRS falsified its IMF record system to reflect that the Service supposedly received a voluntary 1040A return from the targeted victim, (in this case, me) which the Service then pretends to audit, etc. The inference derived from the IRS "scheme,"[5] is just as simple: Absent the extensive, invariable, sequential fraud I explain in the attached *Respectful Demand*....., neither I nor any nontaxpayer owes anything to the Treasury, hence I owe no duty to file or pay anything.

Dispositive to this Case

If the government-provided evidence I presented to Mr. West is confirmed, every involved attorney knows that the institutionalized IRS record program used to bring nontaxpayers within the government's assessment and collection power, and to generate the appearance of cases within the jurisdiction of a district court (by using computer fraud to circumvent the Service's claimed lack of authority), is the very definition of "outrageous government misconduct." No court can grant any plaintiff relief after presenting cases derived from falsified records/evidence.[6]

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[5] In *Hazel-Atlas Glass Co v. Hartford-Empire Co.*, 322 U.S. 772, the Supreme Court addressed the awesome injustice of attorneys perpetrating a "scheme" to defraud litigants and Government agencies:
"Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and **carefully executed scheme to defraud**," (by attorneys/officers of the court), "not only the Patent Office but the Circuit Court of Appeals." [Emphasis added.]

[6] "The court's aid is denied only when he who seeks it has violated the law in connection with the very transaction as to which he seeks legal redress. Then aid is denied despite the defendant's wrong. It is denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination.... [T]he objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all the parties to the litigation. ***The court protects itself***." *Olmstead v. United States*, 277 U.S. 438, unrivaled dissent, Brandeis, J, emphasis added.

Incredibly, the United States Attorney's Office explicitly counsels prosecutors to prevent IMF records from entering cases in criminal trials,[7]even though they contain exculpatory evidence. USAG surrogates have a duty to learn of the underlying record falsification scheme even if they claim personal ignorance.[8] They are imputed by law to know that the IRS systematically falsifies its digital records and paper certifications based thereon,[9] and have a duty to disclose the exculpatory evidence of the existence of the institutionalized IRS record falsification scheme to defendants (and grand juries) in criminal trials.[10]

But, the AG's subordinates in my case, AUSAs Ferland, Hebert and O'Donnell did NOT provide to me or to the indicting grand jury the newly-discovered evidence appended to my *Respectful Demand…*, which evidence proves that the IRS fabricated falsified IMF records and certifications concerning me, as the IRS does to justify all criminal prosecutions of nontaxpayers / "non-filers"

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[7] In the DoJ's 2001 Criminal Tax Manual, **Section 40.03[9][c]** the Agency directly instructs United States prosecuting attorneys to avoid entering the (falsified) IMF records into evidence in court hearings. Instead, the DoJ explicitly advises prosecutors to substitute IRS' so-called "self-authenticating" (and also falsified) certificates concerning the IMF records, when cases go to trial:

> "Admissibility of IRS Computer Records. The introduction of the actual Individual Master File (IMF) transcript of account through a witness can open the witness to cross-examination by the defense about every code and piece of information contained in the transcript. **In order to avoid this problem, it may be wiser to simply offer IRS computer records at trial in the form of Certificates of Assessments and Payments, certified documents reflecting tax information kept on file at the IRS."** [Emphasis added.]
>
> Link here: https://www.justice.gov/sites/default/files/tax/legacy/2006/02/28/40ctax.pdf

[8] See *US v. Andrews*, 532 F. 3d 900- Court of Appeals, D.C. Circuit 2008: "Hence, to comply with *Brady,* the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case.' *In re Sealed Case,* 185 F.3d at 892, Court of Appeals, D.C. Circuit 1999 (quoting *Kyles v. Whitley,* 514 U.S. 419, 437).

[9] *See United States v. Beers*, 189 F.3d 1297, 1304 (10th Cir.1999) "Information possessed by other branches of the government, including investigating officers, is typically imputed to the prosecutors of the case". *United States v. Jennings*, 960 F.2d 1488, 1490 (9th Cir. 1992) ("[t]his personal responsibility cannot be evaded by claiming lack of control over the files … of other executive branch agencies").

[10] Thus, a defendant's due process right to a fair trial is violated when any Government actor or agent withholds material evidence favorable to the defendant, irrespective of any knowledge on behalf of the prosecuting attorney. *See United States v. Beasley*, 575 F.2d 626, 632 (5th Cir. 1978) ("The duty of disclosure affects not only the prosecutor, but the Government as a whole, including its investigative agencies.").

accused of willful failure to file crimes.

Importantly, "All courts which have directly confronted the question agree that the deliberate manufacture of false evidence (by the Government) contravenes the Due Process Clause".[11] Judicial agreement on the subject includes ten circuits, and none departs from the rule, stated succinctly: "Anyone who acts on behalf of the government should know that a person has a constitutional right not to be 'framed'".[12]

The IRS framed me, in part, by surreptitiously falsifying federal digital and paper records to reflect 1.) Its pretended receipt of a return FROM ME concerning 2009 on August 25, 2011, and to reflect 2.) IRS' pretended "examination" of the phantom 1040A return on another false date, and 3.) IRS' pretended preparation of a substitute 1040A income tax return on September 12, 2011, none of which occurred. The DoJ's failure to reveal that exculpatory evidence to me and to the indicting grand jury, standing alone, is "outrageous government misconduct" sufficient to justify withdrawing my plea, and to dismiss this case.

Fruitless Attempts to Secure Mr. West's Professional Opinion

On multiple occasions I sought Mr. West's focus on the simple three-part defense I wish to raise, stated above. Dates when we actually met, or exchanged email insights were:

09-23-2020 Zoom Meeting to begin discussing details of *Respectful Demand*...

10-02-2020 Zoom Meeting to continue discussing details of *Respectful Demand*...

10-19-2020 Email sent to Mr. West with copy of Certified Copy of US Tax Court Order, Docket 15390-19 dated November 21, 2019

10-26-2020 Zoom Meeting to continue discussing details of *Respectful Demand*...

10-28-2020 Email sent requesting results of Conference with Judge Smith

11-05-2020 Email with attachment "2020-11-05 Letter to George West" sent to Mr. West

[11] *Whitlock v. Brueggemann*, 682 F.3d 567, 585 (7th Cir. 2012), cert. denied 133 S.Ct. 981 (2013).
[12] *Devereaux v. Abbey*, 263 F.3d 1070, 1084 (9th Cir. 2001).

11-07-2020 West responded with "Schofield tax deficiency notice case.pdf" with no explanation or message in the email.

11-09-2020 Email from Mr. West that he intends to file a Motion to withdraw on 11-10-2020

On the most recent date, October 26th, we walked through a portion of the sworn *Respectful Demand*... appended hereto with exhibits, which contains 31 explicit factual allegations supported by incontrovertible evidence appended. During that meeting Mr. West appeared intrigued that the so-called "SFR package" IRS created concerning me and 2009 does not appear in the IMF.

But to this date, Mr. West has failed/refused to provide ANY reason why my suggested defense is improper, unconvincing or not dispositive. And now, as his only response to my careful, reasoned multiple requests for his advice, he is unilaterally attempting to withdraw from this case, claiming as justification a purported but unexplained "breakdown of communication." So, despite having received tens of thousands of dollars from the Court over the past two years, he has refused to provide me or the Court a shred of insight into his professional opinion concerning the simple, elegant defense I discovered and proposed. His refusal to provide any insight to me, let alone to the Court, is unconscionable, and implicates my Sixth Amendment right to effective assistance of counsel.

Relief Requested

First, I respectfully request the Court judicially notice the *Respectful Demand*… with Exhibits appended to this Objection, to establish ONLY that I have diligently sought Mr. West's opinion as to the three-part defense I proposed he present on my behalf, as described above;

Second, since the Court, and the American people, have subsidized Mr. West's involvement in this case since 2018, and since "effective assistance of counsel" necessarily contemplates that appointed counsel provides at least SOME stated professional advice and reasoning concerning a

potential defense, as well as the benefit of his many months of paid, supposed conscientious research into it, I respectfully move the Court to order Mr. West to present

a. A full detailed report of ALL discovery he undertook with DoJ/IRS concerning my proposed defense during the post-plea period; and

b. His conscientious analysis of each part of the three-element defense I proposed to him, as detailed above and set forth in the *Respectful Demand…* attached (and incorporated fully by reference herein);

c. His full explanation why he never gave me ANY advice whatsoever as to ANY part of the three-element defense I proposed, and

d. His detailed reason justifying his refusal to present to this Court the three-element defense I proposed.

Alternatively, since the *Respectful Demand…* and Evidence appended tends to prove the existence of the dispositive defense I proposed, to which Mr. West has refused to respond to date, I move the Court to Order him to assist me to vigorously present the three-part defense I have proposed at our next hearing December 3, 2020. He's had a year to prepare … and this case needs to end.

Respectfully presented,

By: Billie-Russell: Schofield

Billie-Russell: Schofield
c/o 42 Trout Brook Lane
Hope, Rhode Island and Providence Plantations, [near 02831]
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Verification/Declaration

Comes now Billie-Russell: Schofield, with personal knowledge of the admissible, material facts related above and competent to testify thereto, declare under penalty of perjury pursuant to 28 USC §1746, that all the facts stated in the foregoing **"PROVISIONAL OBJECTION TO MOTION TO WITHDRAW & MOTION TO NOTICE, With DECLARATION, Evidence and Exhibits in Support" a**re absolutely true and correct to the very best of my knowledge and belief, that I have personal knowledge of almost every fact alleged, that they are material, admissible, and that I am competent to testify thereto.

Further, not knowing whether Rhode Island [and Providence Plantations], where I am domiciled is technically "within" or "without" "the United States", since that entity has been defined in many varying ways, I request the Court makes that determination.

With that said, if Rhode Island is "without" "the United States", as that entity is defined by this Court: "I declare (or certify, verify, and state) under penalty of perjury, pursuant to 28 U.S.C. § 1746 that every material fact, and inferences derived therefrom, presented in the foregoing document, is true and correct."

If Rhode Island [and Providence Plantations] is "within" "the United States", its territories, possessions, or commonwealths, as that entity is defined by this Court: " I also declare (or certify, verify, and state) under penalty of perjury that every material fact, and inferences derived therefrom, presented in the foregoing document, is true and correct.

SO HELP ME GOD.

Executed on November 16, 2020

By: Billie-Russell: Schofield

Billie-Russell: Schofield

CERTIFICATE of SERVICE

This is to certify that a copy of the foregoing **"PROVISIONAL OBJECTION TO MOTION TO WITHDRAW & MOTION TO NOTICE, With DECLARATION, Evidence and Exhibits in Support"** was served via United States Mail on or about November 16, 2020 to:

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